



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645

(512) 804-4000 | F: (512) 804-4811 | (800) 252-7031 | TDI.texas.gov | @TexasTDI

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

Sentrix Pharmacy and Discount, L.L.C.

Respondent Name

Berkshire Hathaway Homestate Insurance Company

MFDR Tracking Number

M4-18-0185-01

Carrier's Austin Representative

Box Number 6

MFDR Date Received

September 22, 2017

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The insurance carrier, Berkshire Hathaway, failed to take final action on the claim within the 45-day period set forth in TAC §133.240. Specifically the claim was submitted on 7/6/17 and it was received by the provider on 7/10/17 ... and no action was taken on the claim. After 30 days, the Pharmacy had submitted a second request for payment (on 8/24/17) based upon expiration of the 45-day period and it was received by the provider on 8/29/17 ... Again, no action was taken on the claim."

Amount in Dispute: \$2,078.06

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Carrier denies that Sentrix Pharmacy & Discount LLC is entitled to reimbursement for medical treatment for the date of service in dispute, 7/06/17. Such treatment was not medically necessary under the ODG, and the required preauthorization was never sought. Moreover, the amount in dispute, \$2,078.06, is excessive and unreasonable. For all of the aforementioned reasons, Requestor is not entitled to reimbursement for the compounded pain cream."

Response Submitted by: Stone Loughlin Swanson

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
July 6, 2017	Pharmacy Services – Compound	\$2,078.06	\$1,718.06

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §133.240 sets out the procedures for payment and denial of medical bills.

3. 28 Texas Administrative Code §134.502 sets out the procedures for pharmaceutical benefits.
4. 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
5. 28 Texas Administrative Code §134.530 sets out the closed formulary requirements for claims not subject to certified networks.
6. Texas Insurance Code, Chapter 4201 provides requirements related to utilization review.
7. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
 - The procedure or supply requires prior authorization or approval.
 - Precertification/authorization/notification absent.

Issues

1. Did Berkshire Hathaway Homestate Insurance Company (Berkshire Hathaway) raise a new defense pursuant to 28 Texas Administrative Code §133.307?
2. Is the Berkshire Hathaway's reason for denial of payment supported?
3. Is Sentrax Pharmacy and Discount, L.L.C. (Sentrax) entitled to reimbursement of the disputed services?

Findings

1. In its position statement, Stone Laughlin Swanson argued on behalf of Berkshire Hathaway, "... the compounded pain cream for which reimbursement is sought is not medically necessary according to the Official Disability Guidelines." In a supplemental response, Stone Laughlin Swanson stated, "We are providing additional documentation, in the form of an adverse determination following utilization review, which supports Carrier's position regarding the lack of medical necessity."

28 Texas Administrative Code §133.307(d)(2)(F) states, in relevant part, "The response shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review."

Review of the submitted documentation finds that Berkshire Hathaway failed to present a medical necessity denial to Sentrax in accordance with 28 Texas Administrative Code §133.240 prior to the date the request for medical fee dispute resolution (MFDR) was filed. The division concludes that this defense presented in Stone Laughlin Swanson's position statement shall not be considered for review because this assertion constitutes a new defense pursuant to 28 Texas Administrative Code §133.307(d)(2)(F).

2. Sentrax is seeking reimbursement of \$2,078.06 for a compound dispensed on July 6, 2017. Berkshire Hathaway denied the disputed service with the following claim adjustment reasons: "The procedure or supply requires prior authorization or approval," and "Precertification/authorization/notification absent." 28 Texas Administrative Code §134.530(b)(1) states that preauthorization is **only** required for:
 - (A) drugs identified with a status of "N" in the current edition of the *ODG Treatment in Workers' Comp* (ODG) / Appendix A, *ODG Workers' Compensation Drug Formulary*, and any updates;
 - (B) any compound that contains a drug identified with a status of "N" in the current edition of the *ODG Treatment in Workers' Comp* (ODG) / Appendix A, *ODG Workers' Compensation Drug Formulary*, and any updates; and
 - (C) any investigational or experimental drug for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, but which is not yet broadly accepted as the prevailing standard of care as defined in Labor Code §413.014(a).

Provision §134.530(b)(1)(A) preauthorization requirement is not discussed in this dispute because it was not asserted by either party and is not applicable to the compound in question.

While not asserted by Berkshire Hathaway, Sentrax was not required to seek preauthorization pursuant to §134.530(b)(1)(B) because none of the compounded ingredients have a status of "N" in the current edition of the ODG/Appendix A.

Stone Loughlin Swanson, on behalf of Berkshire Hathaway, argued that "The ODG ... states that topical analgesics are '[I]argely experimental in use...'"

The determination of a service’s investigational or experimental nature is not subject to the *Official Disability Guidelines* (ODG). Instead, it is determined on a case by case basis as a utilization review pursuant to Texas Insurance Code §4201.002. Further, Texas Insurance Code §4201.002(13) states that utilization review, in relevant part, “includes a system for prospective, concurrent, or retrospective review to determine the experimental or investigational nature of health care services.”

The division found **no evidence** that Berkshire Hathaway engaged in a prospective or retrospective utilization review (UR) as required by Texas Insurance Code §4201.002 in order to establish that the following compound is investigational or experimental in nature:

Compound Cream in Dispute	
Ingredient	Amount
Salt Stable LS Base	170.4 gm
Baclofen 4%	9.6 gm
Amitriptyline 2%	4.8 gm
Ketoprofen 10%	24.0 gm
Amantadine 8%	19.2 gm
Gabapentin 5%	12.0 gm

Because Berkshire Hathaway failed to perform UR on the above listed compound, the requirement for preauthorization under §134.530(b)(1)(C) **is not triggered** in this case.

Berkshire Hathaway’s preauthorization denial is therefore not supported.

Absent any evidence that Berkshire Hathaway presented other defenses to Sentrix before medical fee dispute resolution that conform with the requirements of Title 28, Part 2, Chapter 133, Subchapter C, the division finds that the compounds in question are eligible for reimbursement.

3. Sentrix is seeking reimbursement for a compound submitted as follows:

- Salt Stable LS Base, NDC 00395602157, \$572.54
- Baclofen 4%, NDC 00395803243, \$342.05
- Amitriptyline 2%, NDC 00395804843, \$87.55
- Ketoprofen 10%, NDC 00395805643, \$250.80
- Amantadine 8%, NDC 00395805843, \$465.12
- Gabapentin 5%, NDC 10695003507, \$360.00

The division finds that NDC 10695003507 is not a valid National Drug Code (NDC) as required by 28 Texas Administrative Code §134.502(d)(1). Therefore, this ingredient will not be considered for reimbursement.

Berkshire Hathaway states that “the cost for the compound cream is manifestly excessive and unreasonable.” 28 Texas Administrative Code §134.503 sets the fees for the compound in dispute and states, in pertinent part:

- (c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:
 - (1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:
 - (A) Generic drugs: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \4.00 dispensing fee per prescription = reimbursement amount;
 - (B) Brand name drugs: $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \4.00 dispensing fee per prescription = reimbursement amount;
 - (C) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or
 - (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
 - (A) health care provider; or

(B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider.

The compounds in dispute were billed by listing each drug included in the compound and calculating the charge for each drug separately as required by 28 Texas Administrative Code §134.502(d)(2).

Reimbursement is calculated as follows:

Ingredient	NDC & Type	Price/ Unit	Total Units	AWP Formula §134.503(c)(1)	Billed Amt §134.503 (c)(2)	Lesser of (c)(1) and (c)(2)
Salt Stable LS Base	00395602157 Brand Name	\$3.36	170.4 gm	\$624.07	\$572.54	\$572.54
Baclofen 4%	00395803243 Generic	\$35.63	9.6 gm	\$427.56	\$342.05	\$342.05
Amitriptyline 2%	00395804843 Generic	\$18.24	4.8 gm	\$109.44	\$87.55	\$87.55
Ketoprofen 10%	00395805643 Generic	\$10.45	24.0 gm	\$313.50	\$250.80	\$250.80
Amantadine 8%	00395805843 Generic	\$24.225	19.2 gm	\$581.40	\$465.12	\$465.12
Gabapentin 5%	10695003507 Invalid NDC	\$0.00	12.0 gm	\$0.00	\$360.00	\$0.00
Compound Fee	NA	\$0.00	NA	\$15.00	\$0.00	\$0.00
					Total	\$1,718.06

The total allowable reimbursement for the compound in dispute is \$1,718.06. This amount is recommended.

Conclusion

The outcome of this medical fee dispute relied upon the evidence presented by the requestor and the respondent at the time of adjudication. Though all the evidence may not have been discussed, it was considered. For the reasons stated above, the division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$1,718.06.

ORDER

Based on the submitted information, pursuant to Texas Labor Code Section 413.031 and 413.019 (if applicable), the division has determined the requestor is entitled to additional reimbursement for the disputed services. The division hereby ORDERS the respondent to remit to the requestor \$1,718.06, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this order.

Authorized Signature

_____	Laurie Garnes	December 8, 2017
Signature	Medical Fee Dispute Resolution Officer	Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with Rule §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.